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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/930, 702 02/13/98 WETZEL

T CPW50075/US

HM12/0216

PATENT & TRADEMARK ADMINISTRATOR  
ICI AMERICAS INCORPORATED LAW DEPARTMENT  
CONCORD PLAZA  
3411 SILVERSIDE ROAD PO BOX 15391  
WILMINGTON DE 19850

EXAMINER

SEIDLECK, B

ART UNIT	PAPER NUMBER
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1615

12

DATE MAILED: 02/16/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>08/930,702</b>	Applicant(s) <b>Wetzel et al.</b>
	Examiner <b>Brian K. Seidleck</b>	Group Art Unit <b>1615</b>

Responsive to communication(s) filed on Nov 29, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 24-37 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 24-37 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

***Papers Received***

1. Receipt is acknowledged of applicants' Amendment and Response filed on 11/29/1999.

***Response to Arguments***

2. Applicants' arguments filed 11/29/1999 have been fully considered but they are not persuasive. The examiner maintains the following rejection(s):
  3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
  4. Claim 26 recites the limitation "surfactant dispersion" in line 1. There is insufficient antecedent basis for this limitation in the claim.  
Claim 29 recites the limitation "surfactant" in line 1. There is insufficient antecedent basis for this limitation in the claim.
  5. The term "very high" in claim 31 is a relative term which renders the claim indefinite. The term "very high" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

6. Claims 35-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Hague et al (5,543,074, hereinafter “Hague”). The examiner maintains the 102 rejection for the above claims and withdraws the rejection for claims 24-34.

Hague teaches a composition suitable for cleansing and conditioning of the skin or hair. See Col. 2, lines 21-24. As to the ingredients, Hague recites a isethionate surfactant (Col. 4, lines 66-67); sulphosuccinate (Col. 5, lines 12-17); fatty alcohol (Col. 3, lines 45-47); zantham gum (Col. 4, lines 45-49); and silicone oils (Col. 3, lines 38-40). The surfactant component is present in an amount of 2 to 40% and the balance of water for the dispersion overlaps that of the present invention. See Col. 8, lines 15-40. The dispersion is formed by adding the surfactant composition to water at 50°C. Id.

7. Claims 24-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hague et al (5,543,074, hereinafter “Hague”); or Unilever (EP 0 485 212 A1). The examiner no longer relies on Patterson (US 5,248,495) or Proctor & Gamble (WO 94/17166) for the 103 rejection.

As stated above, Hague teaches a composition suitable for cleansing and conditioning of the skin or hair. See Col. 2, lines 21-24. As to the ingredients, Hague recites a isethionate surfactant (Col. 4, lines 66-67); sulphosuccinate (Col. 5, lines 12-17); fatty alcohol (Col. 3, lines 45-47); zantham gum (Col. 4, lines 45-49); and silicone oils (Col. 3, lines 38-40). The surfactant component is present in an amount of 2 to 40% and the balance of water for the dispersion overlaps that of the present invention. See Col. 8, lines 15-40. The dispersion is formed by adding the surfactant composition to water at 50°C. Id.

Hague is silent as to the state (i.e solid, liquid or semi-solid) of the surfactant portion, prior to its combination with the remaining ingredients (oil and water). However, it is noted that the present manufacturing examples at pages 10-11 (i.e. method 3), disclose an initial solid surfactant mixture/blend, but the solid is then heated to a liquid state before, the oil and water additives are added.

Similarly, Unilever teaches a personal foaming composition, comprising isethionates, sulphosuccinate, fatty alcohols, silicone oils, and polyethylene glycols. See pages 2-5. As to the present method claims, wherein the pre-formed surfactant portion is made, Unilever teaches that pre-mixes of the components may be made for purposes of convenience. See page 4. The applicants, in their response argue that the present method results in easier formulation, and therefore is patentably distinguishable over the prior art. However, it is the examiner's position that Unilever's statement regarding pre-mixing for convenience, renders applicants method obvious. It is the examiner's position that one of ordinary skill in the art would have been motivated to pre-mix certain components for purposes of convenience and that such practice is routine in the art, and thereby obvious, absent a showing of criticality.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Brian K. Seidleck** whose telephone number is **(703) 305-4448**. The examiner can normally be reached **Monday through Friday from 7:00am to 4:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K. Page**, can be reached on **(703) 308-2927**. The official fax numbers for Technology Center 1600 are **(703) 305-3592** and **(703) 308-4556**. The unofficial fax number is **(703) 308-7924**.

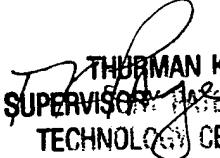
Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. § 132 or which otherwise require a signature, may be used by the applicant and should be addressed to **[thurman.page@uspto.gov]**.

**All Internet e-mail communications will be made of record in the application file.**  
**PTO employees do not engage in Internet communications where there exists a possibility**

**that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of confidentiality requirements of U.S.C. § 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-1235 or (703) 308-1234.

Brian K. Seidleck  
Patent Examiner  
February 8, 2000

  
THIRUMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600